

No. 24/2011 (Viet Nam)

Communication addressed to the Government on 28 February 2011

Concerning: Cu Huy Ha Vu

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The source informs that Cu Huy Ha Vu, born in XXXX, is a Doctor of Law and Viet Nam's most outspoken legal activist. He has fought to protect environmental and cultural heritage sites since 2005, when he filed a lawsuit opposing the plan of the People's Committee of Thua Thien-Hue to build a tourist resort on Vong Canh hill in Hue.

4. It is reported that on 5 November 2010, Cu Huy Ha Vu was arrested by the Vietnamese authorities claiming to have found him in a hotel room with a woman who was not his wife. The authorities confiscated Cu Huy Ha Vu's computer and searched his house; he was taken to the Ministry of Public Security Detention Centre at 238 Nguyen Van Cu, District 1, Saigon.

5. On 6 November 2010, Deputy Minister, Major General To Lam, and Deputy of Security General Department II, Major General Hoang Kong Tu, of the Ministry of Public Affairs held a press

conference to announce the charges against Cu Huy Ha Vu, which included "producing documents that spread false and fabricated information, distorting the leadership and management of the State, causing confusion among the people, provoking, advocating exhortation against the State and slandering and offending the honour of the leaders of the State" in alleged violation of article 88 of the Viet Nam Penal Code.

6. The incriminating documents referred to in the press conference included the two lawsuits against Prime Minister Nguyen Tan Dung which were filed by Cu Huy Ha Vu. The first lawsuit, filed on 11 June 2009, concerned the Prime Minister's approval of a controversial bauxite mining project in the Central Highlands; the second lawsuit, was also brought against a decision signed by the Prime Minister, which forbade citizens from filing class action petitions and complaints with the Government. On 16 October 2010, Cu Huy Ha Vu's law firm took on the defence of Catholics from Con Dau parish in Danang who were arrested in May 2010 after the police had dispersed a funeral procession to a cemetery located on disputed land. The People's Court of Cam Le district refused to grant permission for the law firm to represent the families. On 21 October 2010, Cu Huy Ha Vu filed a follow-up lawsuit against the Prime Minister over Decision No. 136.

7. On 17 December 2010, the Hanoi People's Procuracy issued an indictment charging Cu Huy Ha Vu with "disseminating information against the State of the Socialist Republic of Vietnam," further to article 88 of Viet Nam's Penal Code. According to the indictment, investigators found that between 2009 and October 2010, Cu Huy Ha Vu had posted a large number of articles and interviews with contents against the State of the Socialist Republic of Viet Nam on the Internet.

8. Cu Huy Ha Vu was convicted by Hanoi People's Court on 4 April 2011, following a trial during which he was denied his right to a fair and public hearing by a competent, independent and impartial tribunal. According to the source, the trial only lasted half a day; the proceedings were closed to foreign media and were held under tight security with uniformed and plainclothes security officers surrounding the court house. Cu Huy Ha Vu was sentenced to seven years' imprisonment and three years' house arrest for "propaganda against the Socialist Republic of Viet Nam", under article 88 of Viet Nam's Penal Code. The source informs that on 2 August 2011, the Supreme People's Court upheld the sentence against Cu Huy Ha Vu, saying there was no basis for dismissing the case.

9. The source contends that Cu Huy Ha Vu's arrest, detention, and conviction are linked to his work as a human rights advocate. The source refers to article 29 the Socialist Republic of Viet Nam's Constitution which states that "State organs, units of armed forces, economic organizations, and individuals have the duty to implement State regulations on the rational use of natural resources and protection of the environment". The Constitution also prohibits "all acts of depleting natural resources and destroying the environment". Article 18 of the Socialist Republic of Viet Nam's Constitution requires organizations and individuals "to protect, replenish, and exploit [land allotted to them] in a rational and economical fashion". According to the source, the lawsuits filed by Cu Huy Ha Vu were in line with the implementation of the constitutional provisions.

10. The source contends that Cu Huy Ha Vu's activities are entirely lawful and cannot serve as a legal basis for his detention. The source refers to the Working Group's previous opinions (No. 20/2003 and No. 19/2004), dealing with cases of human rights defenders in Viet Nam and holding that their deprivation of liberty was arbitrary.

11. According to the source, Cu Huy Ha Vu's deprivation of liberty is linked to the two lawsuits that he had filed against the Prime Minister of Viet Nam. The source submits that his continued detention is a direct consequence of the exercise of his right to freedom of opinion and expression.

Response from the Government

12. In its reply of 6 June 2011, the Government maintains that the detention and subsequent conviction of Cu Huy Ha Vu are in conformity with the relevant provisions of both domestic and international human rights law.

13. The Government confirmed that Cu Huy Ha Vu was arrested on 5 November 2010 and accused of "activities against the Socialist Republic of Viet Nam". According to the reply, the investigation proved that Cu Huy Ha Vu "colluded with hostile forces and exile organizations and groups, in both Viet Nam and abroad, in instigating riots, social instability and disorder". He also produced and

circulated documents of defamation to disseminate confusion, suspicion among the population and incite violence, hatred and division among communities.

14. The Government informs that on 4 April 2011, Cu Huy Ha Vu was sentenced by the People's Court of Hanoi to seven years in prison and three years of probation, in accordance with article 88 of the 1999 Penal Code which states that "those who propagate psychological warfare and spreading fabricated news in order to foment confusion among people shall be sentenced to between three and 12 years of imprisonment".

15. The Government contends that the arrest and criminal proceedings against Cu Huy Ha Vu were carried out in strict compliance with provisions of the Vietnamese laws, particularly the 2003 Criminal Procedure Code and also in line with international standards on human rights, particularly the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

16. Cu Huy Ha Vu was tried by the Court of first instance and he had the right to file a complaint before the Court of Appeal. The trial was public with the participation of more than 50 people, including four lawyers to defend his interests, witnesses, as well as Cu Huy Ha Vu's wife. In a spirit of transparency, the media, including foreign channels (AP, APP, Kyodo), representatives from the European Union Delegation and diplomats from the embassies of the United States of America, Australia, Norway, Switzerland, Canada and New Zealand were also allowed to attend the trial. The Government concludes that the allegations that Cu Huy Ha Vu has been arbitrarily detained and that the trial was closed to the public are untrue.

17. According to the Government's reply, article 88 of the 1999 Penal Code is strictly compatible with article 19 of the International Covenant on Civil and Political Rights which states that "the exercise of the [right to freedom of expression] carries with its special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals."

18. In the Government's view, all the violations of the law in Viet Nam that cause harm to national security and public order must be punished in order to ensure respect of the law and to guarantee the rights of other people and the peace, security and development which are in the common interests of the society. The Government reiterated that the activities carried out by Cu Huy Ha Vu were well organized, repeated and clearly aimed at inciting violence and hatred among different ethnic and religious communities. The punishment for these activities is in compliance with the standards of international law.

Comments from the source

19. In its additional comments, the source notes that the Government provided no factual basis for any claim of criminal activity.

20. In the source's view, the accusations that Cu Huy Ha Vu "produced and circulated documents of defamation to disseminate confusion, suspicion among the population, and incite violence, hatred and division among communities" and supposedly "propagated psychological warfare and spread fabricated news in order to foment confusion among people" are not supported by a single fact. No relationship was or could be established between Cu Huy Ha Vu's activities and the statutory description of his "crimes."

21. The source maintains that Cu Huy Ha Vu's deprivation of liberty results from his lawful exercise of the right to freedom of expression under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. The detention resulting from these decisions is therefore arbitrary.

22. As to the Government's assertion that, in the present case, there are limitations to the right to freedom of expression because Cu Huy Ha Vu's activities could cause "harm to national security and public order," the source opines that none of the activities conducted by Cu Huy Ha Vu have caused any harm or created any risk to national security or public order, nor is there any evidence of such harm. On the contrary, Cu Huy Ha Vu's lawsuit against the Prime Minister over his decision to authorize the functioning of a bauxite mine in the Central Highlands was aimed at protecting the citizens from the serious health hazards that this type of mining can cause, as seen recently with the toxic spill of the tailings pond of a similar mining operation in Hungary.

Discussion

23. Regarding the question of violation of national legislation mentioned by the Government, the Working Group recalls that in its previous opinions No. 1/2003, No. 13/2007, and No. 1/2009 relating to Viet Nam, it had stressed that "in conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law".

24. The Working Group also reiterates its previous finding in opinion No. 1/2009 that broad criminal law provisions, which make "taking advantage of democratic freedoms and rights to abuse the interests of the State" are inherently inconsistent with any of the rights and liberties guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Viet Nam is a party.

25. In the present case, Cu Huy Ha Vu was charged with "disseminating information against the State of the Socialist Republic of Vietnam" by posting articles and interviews on the Internet criticizing the Government.

26. Indeed, the national law which gave rise to the indictment against him and the subsequent conviction by the court cannot be regarded as consistent with the relevant provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Working Group recalls that the holding and expressing of opinions, including those which are not in line with official Government policy, are protected under article 19 of the International Covenant on Civil and Political Rights.

Disposition

27. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Cu Huy Ha Vu is arbitrary, being in contravention of articles 9 and 19 of the International Covenant on Civil and Political Rights, to which Viet Nam is a party, and falling within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

28. Consequent upon the opinion rendered, the Working Group requests the Government of Viet Nam to take the necessary steps to remedy the situation of Cu Huy Ha Vu and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

29. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Cu Huy Ha Vu and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 29 August 2011]